



August 14, 2017

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE

PS Docket No. 16-269: *Public Safety and Homeland Security Bureau Seeks Comment on FirstNet Ex Parte Submissions Proposing Interoperability Requirements for State Opt-Out Requests from the FirstNet Radio Access Network*

WT Docket No. 12-69: *Promoting Interoperability in the 700 MHz Commercial Spectrum*

Dear Ms. Dortch:

On August 10, 2017, Tim Donovan, Courtney Neville, and I of Competitive Carriers Association (“CCA”)¹; Trey Hanbury, Tom Peters, and C. Sean Spivey of Hogan Lovells US LLP on behalf of CCA; and John Nakahata of Harris, Wiltshire & Grannis for Rivada Networks (collectively, “the Parties”), met with David Furth, Roberto Mussenden, Rasoul Safavian, and Erika Olsen (via teleconference) of the Federal Communications Commission’s (“FCC” or “Commission”) Public Safety and Homeland Security Bureau (“PSHSB”), and Becky Schwartz of the Wireless Telecommunications Bureau (“WTB”), to discuss First Responder Network Authority’s (“FirstNet’s”) recent *ex parte* submissions concerning National Public Safety Broadband Network (“NPSBN”) interoperability.² The Parties encouraged the FCC to ensure that the state opt-out review process is realistic and attainable, and that the NPSBN design facilitates interoperability to ensure first responders and consumers are connected throughout the nation.

The Parties first discussed the balanced framework that the Commission adopted for reviewing state opt-out plans. The FCC’s process ensures interoperability with the NPSBN while respecting states’ statutorily afforded right to deploy public safety networks that meet their individualized needs. Per the Middle-Class Tax Relief and Job Creation Act of 2012 (“Spectrum

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the nation. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² See *Public Safety and Homeland Security Bureau Seeks Comment on FirstNet Ex Parte Submissions Proposing Interoperability Requirements for State Opt-Out Requests from the FirstNet Radio Access Network*; Public Notice, 32 FCC Rcd 5104 (PSHSB June 28, 2017); see also *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order, 32 FCC Rcd 5311, 5329 (2017) (“Order”).

Act”)³ and the Technical Advisory Board’s (“TAB”) 2012 Minimum Technical Interoperability Report,⁴ FirstNet is meant to be the antidote to public safety officials and first responders getting locked into an incompatible system or locked out of access to devices. Currently, however, AT&T through FirstNet has certified a series of devices for its network that support Band Class 17, but not Band Class 12 or Band Class 14.⁵ Indeed, the current portfolio will not interoperate with other 700 MHz Band licensees’ networks, and worse, these devices will not interoperate with the public safety network.⁶ Thwarting interoperability with other devices violates the public policy of ensuring that “interoperability is maintained as the evolution of the NPSBN occurs throughout its lifetime.”⁷ The Parties therefore encouraged the Commission to ensure that the NPSBN is compatible with other carriers’ networks so that FirstNet can have the greatest reach, especially in rural areas, and can be accessed by as many entities as will further the public interest and emergency preparedness.

Just as troubling, FirstNet’s Interoperability spreadsheet, which it labeled as its “matrix,” is unclear and ill-suited to fulfilling its purported objective.⁸ Section 6302(e) of the Spectrum Act assigns the FCC the responsibility of reviewing state opt-out plans for compliance with the Act’s interoperability requirements.⁹ Network design and interoperability guidance from FirstNet is welcome but the Spectrum Act does not allow the FCC to subordinate its expert agency opinion to FirstNet. FirstNet’s spreadsheet also is vague and incomplete. For example, the spreadsheet cites to three separate network interface scenarios related to the radio access network portion of the network architecture but, unless read to indicate that FirstNet will support all three at the opt-out state’s choice (the best interpretation on its face), it does not specify whether an opt-out state can

³ See Title VI, Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156 (codified in scattered sections of 47 U.S.C.) (“Spectrum Act”).

⁴ See Technical Advisory Board for First Responder Interoperability, Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network: Final Report (May 22, 2012) (“Interoperability Board Report”); see also, *Recommendations of the Technical Advisory Board for First Responder Interoperability*, Order of Transmittal, 27 FCC Rcd 7733 (2012).

⁵ A sampling of FirstNet devices is available at <https://www.firstnet.com/devices/>. The FirstNet.com website is powered by AT&T. See AT&T Privacy Policy | FirstNet.com, <https://www.firstnet.com/privacy-policy> (last visited Aug. 14, 2017).

⁶ See LEX F10 FirstNet Solution, Motorola Solutions, https://www.motorolasolutions.com/en_us/products/lte-user-devices/lexf10.html#tabproductinfo (last visited Aug. 7, 2017); Donny Jackson, Motorola Solutions’ New LTE Handheld Device Certified by AT&T, is ‘FirstNet-ready’, URGENTCOMM (Aug. 7, 2017), <http://urgentcomm.com/motorolasolutions/motorola-solutions-new-lte-handheld-device-certified-att-firstnet-ready?page=1>. AT&T has committed to focus “almost exclusively on Band 12 configurations, features and capabilities.” See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, et al., Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15144 ¶ 48 (2013).

⁷ See Interoperability Board Report at 58.

⁸ On June 5, 2017, FirstNet submitted a spreadsheet of purported interoperability requirements for opt-out states. FirstNet submitted an amended the spreadsheet on June 16, 2017. See *Ex Parte* Letter from Patrick Donovan, Attorney, First Responder Network Authority to Marlene H. Dortch, Secretary, FCC, and Spreadsheet entitled “State RAN Opt-Out Requirements_FCC_v2.0.xlsx”, PS Docket No. 16-269 (filed June 16, 2017). See also, Interoperability Board Report at 58.

⁹ See Spectrum Act § 6302(e)(3)(C).

choose any one of the interfaces or if FirstNet will attempt to mandate a particular interface under particular circumstances. The spreadsheet also fails to include helpful network information such as the NPSBN's roaming service model or core network coverage and hardening criteria. The Parties also noted that nowhere did FirstNet explain the purpose of its citations to sections of its Request for Proposal ("RFP"), which was promulgated for the purpose of selecting its default network contractor, not determining interoperability with other networks. As such, these citations appear to be non-binding guidance rather than explicit requirements. In any event, there is no notice for treating the RFP citations as explicit requirements, as nowhere did FirstNet propose to do so, nor did the Commission's Public Notice. Further, AT&T's discussion of access point names goes beyond both the explanation provided by FirstNet and the TAB recommendations, and thus cannot be sustained.¹⁰ The best interpretation of the spreadsheet as a whole, therefore, is that it does not set additional requirements beyond those specified in the TAB recommendations, as adopted by the Commission.¹¹ As a result, the FCC's review process for opt-out states should avoid unnecessary burdens that could result in additional criteria beyond the TAB requirements.

To be clear, CCA has no objection to the FirstNet spreadsheet to the extent FirstNet is merely saying that state opt-out plans should follow standard LTE designs and protocols.¹² But the Spectrum Act does not permit, and the FCC cannot allow, exclusionary or vague language in the spreadsheet to frustrate the potential for states to exercise a meaningful choice over otherwise interoperable network designs. The FCC's review process for opt-out states must avoid endorsing proprietary technical standards or equipment and other unnecessary burdens that purport to achieve "interoperability" but in reality, simply frustrate the state opt-out process Congress established in the Spectrum Act.¹³

The Parties likewise encouraged the FCC to follow its recent Report & Order ("Order"), which affirms that "Congress intended to establish a process that affords states a meaningful opportunity to develop and complete requests for proposals, as well as to prepare and file the required opt-out plan with the Commission...States are entitled to make a deliberate, informed choice to opt out of the network."¹⁴ The Order further finds that opt-out states are "in a position to adequately represent the interests of its public, public safety entities in the state, and similar constituencies."¹⁵ In addition, the statute and public interest prevent AT&T and FirstNet from undermining the Commission's interoperability review. It is therefore imperative that the Commission maintain its neutrality on the issue of state core network elements and allow states a meaningful opportunity to opt-out of the NPSBN.¹⁶ Even FirstNet has acknowledged "Congress

¹⁰ See *Ex Parte* Letter from John T. Nakahata, Counsel to Rivada Networks, LLC, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 at 2 (filed July 27, 2017) ("Rivada July 27, 2017 *Ex Parte*").

¹¹ See *id.* at 2-3.

¹² See *id.* at 2.

¹³ Congress set only two requirements for a state to opt-out of FirstNet's plan for the NPSBN: (1) compliance with the *minimum* technical interoperability requirements adopted by the TAB, and (2) the ability to interoperate with the NPSBN. See Spectrum Act § 6302(e)(3)(C).

¹⁴ See Order ¶ 17.

¹⁵ *Id.* ¶ 33.

¹⁶ As Verizon recently noted, "[m]any commenters agree that to achieve Congress's and the FCC's goal of allowing states their 'meaningful exercise of options,' states should have the same flexibility as FirstNet to

drew a balance between the interoperability and self-sustainment goals of the Act and preserving the ability of States to make decisions regarding the local implementation of coverage, capacity, and many other parameters if they wanted to exercise such control.”¹⁷

The Parties look forward to continued work with all interested stakeholders to further deployment of a ubiquitous, reliable NPSBN for the benefit of consumers and industry alike. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission’s Rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

cc (via email): David Furth
Rasoul Safavian
Roberto Mussenden
Erika Olsen
Becky Schwartz

select partners for deploying and operating such a network . . . includ[ing] the . . . authority to build and operate their own network core . . . as long as it is interoperable with FirstNet’s nationwide network.” *See, e.g., Ex Parte* Letter from William H. Johnson, Senior Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 at 1-2 (filed July 24, 2017) (“Verizon *Ex Parte*”).

¹⁷ *See* Further Proposed Interpretations of Parts of the Middle-Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 13,336, 13,341 (Mar. 13, 2015).